IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 16600 of 2001(A)

PETITIONER:

SULABHA, LEELA MANDIRAM, VENNIYODE.P.O.,
CHERUNNIYOOR VILLAGE, TRIVANDRUM DISTRICT.

BY ADV. SRI.SIBY MATHEW
SRI.A.A.MOHAMMED NAZIR

RESPONDENT(S):

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1. SMT.SUSEELA, SUB REGISTRAR, VARKALA.

2. INSPECTOR GENERAL OF REGISTRATION, THIRUVANANTHAPURAM.

GOVERNMENT PLEADER FOR R2 SMT.LAKSHMI RANI.
SRI.M.BALAGOVINDAN(AMICUS CURIAE)
SRI.A.K.CHINNAN(AMICUS CURIAE)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DISMISSED.

28/3/2007. SD/- A.K.BASHEER, JUDGE.

APPENDIX

EXT.P1: TRUE COPY OF ORDER IN COMPLAINT NO.466 OF 2000 DT. 5TH FEBRUARY 2001 OF KERALA LOK AYUKTA.

EXT.P2: TRUE PHOTOCOPY OF AGREEMENT IN FAVOUR OF PETITIONER DT. 16/9/2000.

A.K. Basheer, J.

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4. After considering the contentions raised by the petitioner and the Sub Registrar, the learned Upa Lok Ayukta dismissed the complaint. A copy of the order passed by the Upa Lok Ayukta is on record as Ext.P1.

5. The prayer in this original petition is to issue a writ of certiorari to quash Ext.P1. There is a further prayer to issue a writ of mandamus or such other appropriate writ or direction to respondent No.1 to register the document executed between the petitioner and her husband and declare that petitioner and her husband are entitled to get the document registered under the Act.

6. In the counter affidavit filed on behalf of the respondents, it is primarily contended that the petitioner had not presented any document for registration on the instant date, as alleged. But according to the Sub Registrar, a document writer by name Sasidharan had informed her that a document for vivahamochanam (divorce) was proposed to be presented for registration. The Sub Registrar admitted that she had advised the document writer not to encourage registration of such documents which had no legal validity. The Sub Registrar vehemently refuted the allegation that she had refused to register any document presented by the petitioner.

7. The learned Upa Lok Ayukta, after adverting to the contentions raised by the petitioner and the Sub Registrar, which were primarily based on the allegation of mal administration, had dismissed the complaint holding that the Sub Registrar had not committed any illegality in refusing to register the document. While doing so, the learned Upa Lok Ayukta had directed the Inspector General of Registration to issue appropriate clarifications to all his subordinate officials to desist from registering such documents "which may not have any legal validity or enforceability".

8. It is contended by learned counsel for the petitioner that the Upa Lok Ayukta has passed the impugned order without adverting to the relevant statutory provisions under the Act and the Registration Rules (Kerala) framed thereunder. It is further contended that the relevant law governing the rights of parties to effect divorce under the customary law had also not been considered by the Upa Lok Ayukta.

9. It is true that in Ext.P1 order the learned Upa Lok Ayukta has held that refusal of the Sub Registrar to register the document can be justified, since a document styled as agreement for dissolution of marriage cannot have any legal validity or enforceability. The learned Upa Lok Ayukta has proceeded to hold further that so long as a valid marriage between two

Hindus could not be "validly dissolved by an agreement executed between husband and wife, whether registered or otherwise, it cannot be termed as an action amounting to mal administration". On the contrary, such an action can be considered as a "very proper and desirable action deserving encouragement from all who believe in rule of law and administration of law in accordance with justice and equity." It has been further held that "so long as the parties to the agreement are not permitted, as per their personal law, to dissolve the marriage between them by executing an agreement, it will not only be proper and just but also desirable to refuse registration of such documents in the interest of parties pointing out the absolute futility and inherent danger of executing and registering such agreements. It must be possible to refuse registration in such cases validly and to prevent the parties from acting on the basis of a legally erroneous impression that the marriage between them has been validly dissolved". The learned Upa Lok Ayukta further held that a registering authority who registers an agreement like the one on hand treating it as a divorce instrument would be doing an unjust and improper act, since by doing so he would be knowingly or unknowingly allowing himself to be a party to an act intended to mislead gullible people.

10. In the nature of the issue that has cropped up for consideration, it is necessary to refer to certain relevant provisions under the Act and the Rules.

11. Section 17 of the Act deals with documents of which registration is compulsory. Section 18 enumerates those instruments of which registration is optional. Clause (f) of Section 18 provides that all other documents not required by Section 17 to be registered compulsorily, can also be registered at the option of the executants. No provision in the Act which enables the registering authority to refuse to register a document on the ground that it is illegal, invalid or unenforceable has been brought to my notice.

12. Chapter XII of the Act deals with the power of refusal by the authorities to register documents. Section 71 of the Act postulates that every Sub Registrar refusing to register a document, except on the ground that the property to which it relates is not situated within his sub district shall make an order of refusal and record his reasons for such order in Book No.2 and endorse the words “registration refused” on the document. Section 76 deals with similar power to be exercised by the Registrar.

13. It is pertinent to note that the provisions contained in Section 69

of the Act, inter alia, empower the Government to make rules to regulate "the exercise of the discretion reposed on the Registering Officer by Section 63 and also the procedures of the Registrars and Sub Registrars to exercise their powers. Registration Rules (Kerala) have been framed by the Government in exercise of the powers conferred under section 69(2) of the Act.

14. Rule 67 of the Rules which is relevant for the purpose of this case is extracted hereunder:

> *"67. It forms no part of a Registering Officer's duty to enquire into the validity of a document brought to him for registration or to attend any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:--*
>
> *(a) That the parties appearing or about to appear before him are not the persons they profess to be;*
>
> *(b) That the document is forged;*

> *(c) That the person appearing as a representative, assign or agent, has no right to appear in that capacity;*
>
> *(d) That the executing party is not really dead, as alleged by the party applying for registration; or*
>
> *(e) That the executing party is minor or an idiot or a lunatic"(emphasis supplied)*

A perusal of the above rule will unambiguously show that a registering officer is not duty bound to enquire into the validity of a document brought to him for registration or to attend any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document. But of course the registering officer is bound to consider the objections raised on any of the grounds enumerated under clause (a) to (e) referred to in the above rule.

15. It is also pertinent to note that Rule 191 of the Rules enumerates the reasons for refusal to register a document which, among others, may be on the ground that the document is written in a language which the registering officer does not understand and which is no not commonly used in the district, or that the document contains unattested interlineations,

blanks, erasures etc., that the description of the property is insufficient to identify it, or that the date of execution is not stated in the document, or that it is presented by a person who has no right to present it, or that the registering officer is not satisfied as to the identity of a person appearing before him etc. etc.)

16. A conjoint reading of Rules 67 and 191 of the Rules will clearly indicate that a Registering Officer is not duty bound to enquire into the validity of a document brought to him for registration. As noticed already, registration can be refused only under one or more of the heads mentioned in Rule 191. None of the heads mentioned in Rule 191 indicates that a registering authority can refuse to register a document on the ground that it has no legal validity. Therefore there is considerable force in the contention raised by the petitioner that the registering authority cannot be heard to say that a document which has no "enforceability" or legal validity need not be allowed to be registered.

17. In this context it may also be noticed that petitioner had prepared the document in question in a stamp paper worth Rs.500/-, as provided under Entry 27 of the Schedule in the Kerala Stamp Act 1959, which is extracted hereunder:

Sl.No.	Description of instrument	Proper stamp duty
27.	Divorce instrument of , that is to say, any instrument by which any person effects the dissolution of his marriage.	

Learned counsel for the petitioner contends that if a document is executed on a stamp paper of appropriate value as prescribed under the Stamp Act and presented for registration, the registering authority can not refuse to register the same. It was one of the grounds under which petitioner had filed the complaint before the Lok Ayukta alleging mal administration coming within the purview of the Kerala Lok Ayukta Act.

18. Going by Entry 27 referred to above, it cannot be disputed that the relevant statute acknowledges or recognises execution and registration of an instrument, by which the parties to the instrument may intend to dissolve their marriage. Therefore it cannot be said that an instrument of divorce is an anathema which cannot be countenanced as a document setting out the intention of the parties in the matter of their personal relationships. It will be totally unnecessary for the registering authority to consider whether any legal right will flow from the instrument which is

sought to be executed and registered. In that view of the matter also and particularly in view of Entry 27 in the Schedule under the Kerala Stamp Act, it cannot be said that an agreement for divorce (----------) executed by the petitioner and his wife could not have been registered for the reason that they being Hindus, their marriage could not have been legally dissolved through such a document.

19. Sri.Muhammed Nazir, learned counsel for the petitioner has raised a further contention that the right of the petitioner and her husband to effect a divorce under the custom prevalent in their community (Ezhava) and particularly as sanctioned under the Ezhava Act has not been taken away by the Hindu Marriage Act 1955. He has also invited my attention to various provisions contained in the Madras Marumakkathayam Act, 1933 and Travancore Ezhava Act, 1100, apart from the provisions contained in the Hindu Marriage Act 1955.

20. A decision of the Punjab and Haryana High Court in ***Jagjith Singh*** v. ***Mohinder Kaur*** (1969 (1) ILR P & H 538) has been pressed into service by the petitioner in this connection. Having carefully perused the order passed by the learned single Judge in the above case, I am of the view that the petitioner cannot get any assistance from this decision. Learned

counsel has also cited before me the decisions in ***Saraswathy Amma*** v. ***Padmavathy Amma*** (1992 (2) KLT 276 and ***Yamanaji H. Jadhav*** v. ***Nirmala*** ((2002) 2 SCC 637) in support of his contention that customary divorce can be effected by Hindus even on the face of the provisions contained in Section 29(2) of the Hindu Marriage Act.

21. But in the nature of the dispute that has come up for consideration in this case, I do not deem it necessary to deal with the above contentions. The sum and substance of the contentions raised by the petitioner is that the parties to a marriage are entitled to enter into an agreement for divorce by mutual consent. It is open to them to decide whether the said agreement has to be got registered or not, whatever be the legal implications or validity of such a document.

22. There is considerable force in the above contention. In my view, if the parties to an agreement for divorce want to give some kind of sanctity or acceptability to such a document by getting it registered under the Act, the registering authority cannot or need not look beyond the statutory or procedural parameters prescribed under the Act and the Rules. The registering authority is not statutorily bound to lift the veil and find out either the intention of the parties to the document or its aftermath. So long

as the parties to the document comply with the statutory mandates as regards the execution, presentation, process of registration etc. of the document, the registering authority need not sit in judgment over its legal validity and its purpose or usefulness. Even if any dispute arises between the parties to the document or among those who may claim any right out of the said document at a later point of time, such disputes can only be settled by a competent Court of law. The registering authority cannot arrogate to himself the role of an arbiter to decide the rights and liabilities of parties to a document.

23. For the foregoing reasons I have no hesitation to hold that the registering authority could not have refused to register the agreement executed between the petitioner and her husband for dissolution of their marriage.

24. In the peculiar facts and circumstances of the case, I do not propose to consider the question whether or not the petitioner had in fact presented the document before the Sub Registrar for registration. Suffice it to say that it would be illegal and irregular if any Sub Registrar or Registrar, as the case may be, refuses to register a document purportedly for dissolution of a marriage on the ground that such a document will have

no legal validity or enforceability. If a husband and wife decide to effect divorce by mutual consent and reduce the said decision into writing and execute an agreement to that effect, it can not be the concern of the registering authority to probe into the question whether such an agreement will have "legal validity or enforceability". Therefore the question posed for consideration in the judgment is answered in the negative.

25. Ext.P1 is quashed to the extent it holds that the document presented by the petitioner was not liable to be registered under the Act.

Original Petition is allowed in the above terms.

A.K. Basheer
Judge.

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